

AMENDED IN SENATE JULY 2, 2008

AMENDED IN SENATE JUNE 12, 2008

AMENDED IN ASSEMBLY JANUARY 24, 2008

AMENDED IN ASSEMBLY JANUARY 7, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 180

**Introduced by Assembly Members Bass and Lieu
(Coauthors: Assembly Members Lieber and Wolk)**

January 24, 2007

An act to amend Sections ~~2945.1~~, 2945.2, 2945.3, and 2945.4 of, and to add Section 2945.45 to, the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 180, as amended, Bass. Mortgages: foreclosure consultants.

Existing law defines a foreclosure consultant as a person who offers, for compensation, to perform specified services for a homeowner relating to a foreclosure sale, except as specified. Existing law prohibits a foreclosure consultant from entering into an agreement to assist the owner in arranging, or arrange for the owner, the release of surplus funds prior to 65 days after the trustee's sale is conducted.

This bill would, instead, prohibit a foreclosure consultant from entering into an agreement described above at any time.

Existing law allows a homeowner to cancel a contract with a foreclosure consultant within 3 days after signing the contract by providing written notice of the cancellation at the address provided by the foreclosure consultant. Existing law requires that the contract be written in the same language as principally used by the foreclosure

consultant to describe his or her services or to negotiate the contract. Existing law prohibits a foreclosure consultant from taking any power of attorney from an owner, except to inspect documents as provided by law.

This bill would instead allow a homeowner to cancel a contract with a foreclosure consultant within 5 days after signing the contract, and to do so by mail, e-mail, or facsimile. It would require that a contract with a foreclosure consultant be written in the language principally used by the foreclosure consultant to describe his or her services or to negotiate the contract, and would require the foreclosure consultant, in specified circumstances, to provide the owner, before the owner signs the contract, with one or more copies of a completed contract written in other languages. The bill would prohibit a foreclosure consultant from taking any power of attorney from an owner for any purpose.

The bill would require a foreclosure consultant to register with the Department of Justice in accordance with certain requirements, and to obtain and maintain a surety bond for each transaction of \$100,000. A violation of these provisions would be a crime. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 2945.1 of the Civil Code is amended to~~
- 2 ~~read:~~
- 3 ~~2945.1. The following definitions apply to this chapter:~~
- 4 ~~(a) "Foreclosure consultant" means any person who makes any~~
- 5 ~~solicitation, representation, or offer to any owner to perform for~~
- 6 ~~any compensation or who, for any compensation, performs any~~
- 7 ~~service that the person in any manner represents will in any manner~~
- 8 ~~do any of the following:~~
- 9 ~~(1) Stop or postpone the foreclosure sale.~~
- 10 ~~(2) Obtain any forbearance from any beneficiary or mortgagee.~~

1 ~~(3) Assist the owner to exercise the right of reinstatement~~
2 ~~provided in Section 2924c.~~

3 ~~(4) Obtain any extension of the period within which the owner~~
4 ~~may reinstate his or her obligation.~~

5 ~~(5) Obtain any waiver of an acceleration clause contained in~~
6 ~~any promissory note or contract secured by a deed of trust or~~
7 ~~mortgage on a residence in foreclosure or contained in that deed~~
8 ~~of trust or mortgage.~~

9 ~~(6) Assist the owner to obtain a loan or advance of funds.~~

10 ~~(7) Avoid or ameliorate the impairment of the owner's credit~~
11 ~~resulting from the recording of a notice of default or the conduct~~
12 ~~of a foreclosure sale.~~

13 ~~(8) Save the owner's residence from foreclosure.~~

14 ~~(9) Assist the owner in obtaining from the beneficiary,~~
15 ~~mortgagee, trustee under a power of sale, or counsel for the~~
16 ~~beneficiary, mortgagee, or trustee, the remaining proceeds from~~
17 ~~the foreclosure sale of the owner's residence.~~

18 ~~(b) A foreclosure consultant does not include any of the~~
19 ~~following:~~

20 ~~(1) A person licensed to practice law in this state when the~~
21 ~~person renders service in the course of his or her practice as an~~
22 ~~attorney at law.~~

23 ~~(2) A person licensed under Division 3 (commencing with~~
24 ~~Section 12000) of the Financial Code when the person is acting~~
25 ~~as a prorater, as defined in that division.~~

26 ~~(3) A person licensed under Part 1 (commencing with Section~~
27 ~~10000) of Division 4 of the Business and Professions Code when~~
28 ~~the person makes a direct loan or when the person satisfies all of~~
29 ~~the following:~~

30 ~~(A) The person engages in acts whose performance requires~~
31 ~~licensure under that part.~~

32 ~~(B) The person is entitled to compensation for the acts performed~~
33 ~~in connection with the sale of a residence in foreclosure or with~~
34 ~~the arranging of a loan secured by a lien on a residence in~~
35 ~~foreclosure.~~

36 ~~(C) The person does not claim, demand, charge, collect, or~~
37 ~~receive any compensation until the acts have been performed or~~
38 ~~cannot be performed because of an owner's failure to make the~~
39 ~~disclosures set forth in Section 10243 of the Business and~~
40 ~~Professions Code or failure to accept an offer from a purchaser or~~

1 lender ready, willing, and able to purchase a residence in
2 foreclosure or make a loan secured by a lien on a residence in
3 foreclosure on the terms prescribed in a listing or a loan agreement.

4 (D) The person does not acquire any interest in a residence in
5 foreclosure directly from an owner for whom the person agreed
6 to perform the acts, other than as a trustee or beneficiary under a
7 deed of trust given to secure the payment of a loan or that
8 compensation. For the purposes of this paragraph, a “direct loan”
9 means a loan of a real estate broker’s own funds secured by a deed
10 of trust on the residence in foreclosure, which loan and deed of
11 trust the broker in good faith attempts to assign to a lender, for an
12 amount at least sufficient to cure all of the defaults on obligations
13 that are then subject to a recorded notice of default, provided that,
14 if a foreclosure sale is conducted with respect to the deed of trust,
15 the person conducting the foreclosure sale has no interest in the
16 residence in foreclosure or in the outcome of the sale and the
17 residence is not owned, controlled, or managed by the lending
18 broker; the lending broker does not acquire any interest in the
19 residence in foreclosure directly from the owner, other than as a
20 beneficiary under the deed of trust; and the loan is not made for
21 the purpose or effect of avoiding or evading the provisions of this
22 article.

23 (4) A person licensed under Chapter 1 (commencing with
24 Section 5000) of Division 3 of the Business and Professions Code
25 when the person is acting in any capacity for which the person is
26 licensed under those provisions.

27 (5) A person or his or her authorized agent acting under the
28 express authority or written approval of the Department of Housing
29 and Urban Development or other department or agency of the
30 United States or this state to provide services.

31 (6) A person who holds or is owed an obligation secured by a
32 lien on any residence in foreclosure when the person performs
33 services in connection with this obligation or lien.

34 (7) Any person licensed to make loans pursuant to Division 9
35 (commencing with Section 22000), 10 (commencing with Section
36 24000), or 11 (commencing with Section 26000) of the Financial
37 Code, subject to the authority of the Commissioner of Corporations
38 to terminate this exclusion, after notice and hearing, for any person
39 licensed pursuant to any of those divisions upon a finding that the

1 licensee is found to have engaged in practices described in
2 subdivision (a) of Section 2945:

3 (8) ~~Any of the following persons or entities:~~

4 (A) ~~A person or entity doing business under any law of this~~
5 ~~state, or of the United States, relating to banks, trust companies,~~
6 ~~savings and loan associations, industrial loan companies, pension~~
7 ~~trusts, credit unions, insurance companies.~~

8 (B) ~~A person or entity authorized under the laws of this state to~~
9 ~~conduct a title or escrow business.~~

10 (C) ~~A mortgagee that is an approved mortgagee of the United~~
11 ~~States Department of Housing and Urban Development.~~

12 (D) ~~A subsidiary or affiliate of any person or entity described~~
13 ~~in subparagraphs (A) to (C), inclusive, and any agent or employee~~
14 ~~of such a person or entity while engaged in the business of that~~
15 ~~person or entity.~~

16 (9) ~~A person licensed as a residential mortgage lender or servicer~~
17 ~~pursuant to Division 20 (commencing with Section 50000) of the~~
18 ~~Financial Code, when acting under the authority of that license.~~

19 (e) ~~“Person” means any individual, partnership, corporation,~~
20 ~~limited liability company, association or other group, however~~
21 ~~organized.~~

22 (d) ~~“Service” means and includes, but is not limited to, any of~~
23 ~~the following:~~

24 (1) ~~Debt, budget, or financial counseling of any type.~~

25 (2) ~~Receiving money for the purpose of distributing it to~~
26 ~~creditors in payment or partial payment of any obligation secured~~
27 ~~by a lien on a residence in foreclosure.~~

28 (3) ~~Contacting creditors on behalf of an owner of a residence~~
29 ~~in foreclosure.~~

30 (4) ~~Arranging or attempting to arrange for an extension of the~~
31 ~~period within which the owner of a residence in foreclosure may~~
32 ~~cure his or her default and reinstate his or her obligation pursuant~~
33 ~~to Section 2924e.~~

34 (5) ~~Arranging or attempting to arrange for any delay or~~
35 ~~postponement of the time of sale of the residence in foreclosure.~~

36 (6) ~~Advising the filing of any document or assisting in any~~
37 ~~manner in the preparation of any document for filing with any~~
38 ~~bankruptcy court.~~

39 (7) ~~Giving any advice, explanation or instruction to an owner~~
40 ~~of a residence in foreclosure that in any manner relates to the cure~~

1 of a default in or the reinstatement of an obligation secured by a
2 lien on the residence in foreclosure, the full satisfaction of that
3 obligation, or the postponement or avoidance of a sale of a
4 residence in foreclosure pursuant to a power of sale contained in
5 any deed of trust.

6 (e) “Residence in foreclosure” means a residence in foreclosure
7 as defined in Section 1695.1.

8 (f) “Owner” means a property owner as defined in Section
9 1695.1.

10 (g) “Contract” means any agreement, or any term thereof,
11 between a foreclosure consultant and an owner for the rendition
12 of any service as defined in subdivision (d).

13 ~~SEC. 2.~~

14 *SECTION 1.* Section 2945.2 of the Civil Code is amended to
15 read:

16 2945.2. (a) In addition to any other right under law to rescind
17 a contract, an owner has the right to cancel such a contract until
18 midnight of the fifth business day, as defined in subdivision (e) of
19 Section 1689.5, after the day on which the owner signs a contract
20 that complies with Section 2945.3.

21 (b) Cancellation occurs when the owner gives written notice of
22 cancellation to the foreclosure consultant by mail at the address
23 specified in the contract, or by facsimile or electronic mail at the
24 number or address identified in the contract.

25 (c) Notice of cancellation, if given by mail, is effective when
26 deposited in the mail properly addressed with postage prepaid. If
27 given by facsimile or electronic mail, notice of cancellation is
28 effective when successfully transmitted.

29 (d) Notice of cancellation given by the owner need not take the
30 particular form as provided with the contract and, however
31 expressed, is effective if it indicates the intention of the owner not
32 to be bound by the contract.

33 ~~SEC. 3.~~

34 *SEC. 2.* Section 2945.3 of the Civil Code is amended to read:

35 2945.3. (a) Every contract shall be in writing and shall fully
36 disclose the exact nature of the foreclosure consultant’s services
37 and the total amount and terms of compensation.

38 (b) The following notice, printed in at least 14-point boldface
39 type and completed with the name of the foreclosure consultant,

shall be printed immediately above the statement required by subdivision-(e) (d):

“NOTICE REQUIRED BY CALIFORNIA LAW

_____or anyone working

(Name)

for him or her CANNOT:

(1) Take any money from you or ask you for money
until_____has

(Name)

completely finished doing everything he or she said he or she would do; and

(2) Ask you to sign or have you sign any lien, deed of trust, or deed.”

(c) The contract shall be written in the same language as principally used by the foreclosure consultant to describe his or her services or to negotiate the contract. In addition, the foreclosure consultant shall provide the owner, before the owner signs the contract, with a copy of a completed contract written in any other language used in any communication between the foreclosure consultant and the owner and in any language requested by the owner. If English is the language principally used by the foreclosure consultant to describe the foreclosure consultant’s services or to negotiate the contract, the foreclosure consultant shall notify the owner orally and in writing before the owner signs the contract that the owner has the right to ask for a completed copy of the contract in a language other than English.

(d) The contract shall be dated and signed by the owner and shall contain in immediate proximity to the space reserved for the owner’s signature a conspicuous statement in a size equal to at least 10-point boldface type, as follows: “You, the owner, may cancel this transaction at any time *prior to midnight of the fifth business day after the date of this transaction*. See the attached notice of cancellation form for an explanation of this right.”

(e) The contract shall contain on the first page, in a type size no smaller than that generally used in the body of the document, each of the following:

(1) The name, mailing address, electronic mail address, and facsimile number of the foreclosure consultant to which the notice of cancellation is to be mailed.

(2) The date the owner signed the contract.

(f) The contract shall be accompanied by a completed form in duplicate, captioned “notice of cancellation,” which shall be attached to the contract, shall be easily detachable, and shall contain in type of at least 10-point the following statement written in the same language as used in the contract:

“NOTICE OF CANCELLATION

(Enter date of transaction) (Date)

You may cancel this transaction, without any penalty or obligation, within five business days from the above date.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram,

to _____
(Name of foreclosure consultant)

at _____
(Address of foreclosure consultant’s place of business)

You may also cancel by sending a facsimile (fax) of a signed and dated copy of this cancellation notice, or any other written notice, to the following number:

(Facsimile telephone number of foreclosure consultant’s place of business)

You may also cancel by sending an e-mail canceling this transaction to the following e-mail address:

(E-mail address of foreclosure consultant’s business)

I hereby cancel this transaction

(Date)

(Owner’s signature)

1 (g) The foreclosure consultant shall provide the owner with a
2 copy of the contract and the attached notice of cancellation.

3 (h) *Until the foreclosure consultant has complied with this*
4 *section, the owner may cancel the contract.*

5 ~~SEC. 4.~~

6 SEC. 3. Section 2945.4 of the Civil Code is amended to read:

7 2945.4. It shall be a violation for a foreclosure consultant to:

8 (a) Claim, demand, charge, collect, or receive any compensation
9 until after the foreclosure consultant has fully performed each and
10 every service the foreclosure consultant contracted to perform or
11 represented that he or she would perform.

12 (b) Claim, demand, charge, collect, or receive any fee, interest,
13 or any other compensation for any reason which exceeds 10 percent
14 per annum of the amount of any loan which the foreclosure
15 consultant may make to the owner.

16 (c) Take any wage assignment, any lien of any type on real or
17 personal property, or other security to secure the payment of
18 compensation. That security shall be void and unenforceable.

19 (d) Receive any consideration from any third party in connection
20 with services rendered to an owner unless that consideration is
21 fully disclosed to the owner.

22 (e) Acquire any interest in a residence in foreclosure from an
23 owner with whom the foreclosure consultant has contracted. Any
24 interest acquired in violation of this subdivision shall be voidable,
25 provided that nothing herein shall affect or defeat the title of a
26 bona fide purchaser or encumbrancer for value and without notice
27 of a violation of this article. Knowledge that the property was
28 “residential real property in foreclosure,” does not constitute notice
29 of a violation of this article. This subdivision may not be deemed
30 to abrogate any duty of inquiry which exists as to rights or interests
31 of persons in possession of residential real property in foreclosure.

32 (f) Take any power of attorney from an owner for any purpose.

33 (g) Induce or attempt to induce any owner to enter into a contract
34 which does not comply in all respects with Sections 2945.2 and
35 2945.3.

36 (h) Enter into an agreement at any time to assist the owner in
37 arranging, or arrange for the owner, the release of surplus funds
38 after the trustee’s sale is conducted, whether the agreement involves
39 direct payment, assignment, deed, power of attorney, assignment
40 of claim from an owner to the foreclosure consultant or any person

1 designated by the foreclosure consultant, or any other
2 compensation.

3 ~~SEC. 5.~~

4 *SEC. 4.* Section 2945.45 is added to the Civil Code, to read:

5 2945.45. (a) Except as provided in subdivision (b) of Section
6 2945.1, a person shall not take any action specified in subdivision
7 (a) of Section 2945.1 unless the person satisfies the following
8 requirements:

9 (1) The person registers with, and is issued and maintains a
10 certificate of registration from, the Department of Justice in
11 accordance with the following requirements:

12 (A) The person shall submit a completed registration form,
13 along with applicable fees, to the department. The registration
14 form shall include the name, address, and telephone number of the
15 foreclosure consultant, all of the names, addresses, telephone
16 numbers, Internet Web sites, and e-mail addresses used or proposed
17 to be used in connection with acting as a foreclosure consultant,
18 a statement that the person has not been convicted of, or pled nolo
19 contendere to, any crime involving fraud, misrepresentation,
20 dishonesty, or a violation of this article, a statement that the person
21 has not been liable under any civil judgment for fraud,
22 misrepresentation, or violations of this article or of Section 17200
23 or 17500 of the Business and Professions Code, and any additional
24 information required by the department.

25 (B) The registration form shall be accompanied by a copy of
26 all print or electronic advertising and other promotional material,
27 and scripts of all telephonic or broadcast advertising and other
28 statements used or proposed to be used in connection with acting
29 as a foreclosure consultant.

30 (C) The registration form shall be accompanied by a copy of
31 the bond required pursuant to paragraph (2).

32 (D) The person shall file an update of any material change in
33 the information required by subparagraphs (A) and (B) with the
34 department.

35 (E) The person shall pay any fee set by the department to defray
36 reasonable costs incurred in connection with the department's
37 responsibilities under this article.

38 (2) The person obtains and maintains in force a surety bond for
39 each transaction in the amount of one hundred thousand dollars
40 (\$100,000). The bond shall be executed by a corporate surety

1 admitted to do business in this state. The bond shall be made in
2 favor of the homeowner or, if the homeowner cannot be found, in
3 favor of the State of California for the benefit of the homeowner
4 for damages caused by the foreclosure consultant's violation of
5 this article or any other provision of law. A copy of the bond shall
6 be filed with the Secretary of State, with a copy provided to the
7 department pursuant to subparagraph (C) of paragraph (1).

8 (b) The Department of Justice may refuse to issue, or may
9 revoke, a certificate of registration because of any misstatement
10 in the registration form, because the foreclosure consultant has
11 been held liable for the violation of any law described in
12 subparagraph (A) of paragraph (1) of subdivision (a), or because
13 the foreclosure consultant has failed to maintain the bond required
14 under paragraph (2) of subdivision (a).

15 (c) A person who violates subdivision (a) shall be punished, for
16 each violation, by a fine of not less than one thousand dollars
17 (\$1,000) and not more than twenty-five thousand dollars (\$25,000),
18 by imprisonment in the county jail for not more than one year, or
19 by both that fine and imprisonment. The imposition of a penalty
20 pursuant to this subdivision shall not be affected by the availability
21 of any other relief, remedy, or penalty provided by law, and shall
22 not affect the availability of any such relief, remedy, or penalty.

23 ~~SEC. 6.~~

24 *SEC. 5.* No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section 17556 of
30 the Government Code, or changes the definition of a crime within
31 the meaning of Section 6 of Article XIII B of the California
32 Constitution.